

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
Petitioner

v.

THOMASINE JONES
Respondent

Case Nos.: 2011-DPW-K418801
2011-DPW-K418802
2011-DPW-K420826
2011-DPW-K420827
2011-DPW-K422297
2011-DPW-K422298
2011-DPW-K501230
2011-DPW-K501231

FINAL ORDER

I. INTRODUCTION

A. Parties: District of Columbia Department of Public Works (“DPW”) and Respondent Thomasine Jones. Respondent was represented at the hearing by Robert Simpson, Property Manager.¹ Justin Ingea (“Inspector”) represented DPW.

B. Relevant Laws: 21 District of Columbia Municipal Regulations (“DCMR”) 700.3 (failing to properly containerize solid waste) and 21 DCMR 705.1 (failing to have a licensed solid waste collector).

¹ Mr. Simpson arrived at the hearing at 10:20 a.m. The hearing started at 9:42 a.m.

C. Issues Presented: Did Respondent fail to properly containerize solid waste at 1710 Trinidad Avenue, NE (the “Property”) and fail to have a licensed solid waste collector for the Property on four different dates in the period August through October 2011?

D. Date and Time of Evidentiary Hearing: March 8, 2012, at 9:30 a.m.

E. Witnesses: Inspector Ingea testified for DPW. Mr. Simpson testified for Respondent.

F. Exhibits Received into Evidence: Exhibits 100 through 103; 105, 107, 109, 111 through 113; 202 through 204; and 206 through 210.

G. Result: DPW has met its burden to establish violations of 21 DCMR 700.3 by a preponderance of the evidence. For those four NOVs, I impose fines and a penalty in the total amount of \$2,225. DPW has not met its burden to establish violations of 21 DCMR 705.1 by a preponderance of the evidence. I impose no fines for those four NOVs and dismiss the cases.

II. FINDINGS OF FACT

The Government issued NOVs and Respondent replied as follows:

NOV NO.	ISSUE DATE	VIOLATION DATE	PLEA DATE	VIOLATION	FINE SOUGHT	ABATEMENT SOUGHT?
K418801	8/5/11	8/2/11	noted in filing 11/30/11	700.3	\$150	YES
K418802	8/5/11	8/2/11	noted in filing 11/30/11;	705.1	\$500	
K420826	9/20/11; posted 11/25/11	9/13/11	11/30/11	700.3	\$2,000	YES
K420827	9/20/11; posted 11/25/11	9/13/11	11/30/11	705.1	\$2,000	
K422297	10/26/11; posted 11/8/11	10/20/11	11/15/11	700.3	\$2,000	YES
K422298	10/26/11; posted 11/8/11	10/20/11	11/15/11	705.1	\$2,000	
K501230	11/4/11; posted 1/3/12	10/25/11	1/5/12	700.3	\$150	
K501231	11/4/11; posted 1/3/12	10/25/11	1/5/12	705.1	\$500	

The Property is a four-unit apartment building. Initially in response to a complaint from a neighbor, the Inspector began visiting the Property in August 2011. In total, the Inspector went to the Property at least four times between August 2, 2011, and October 25, 2011.²

² The Inspector visited the Property at least two additional times and issued the following NOVs: K418818, K418819, K419944 and K419945. None of those NOVs have been filed at this administrative court.

On his visits to the Property, the Inspector observed two problem areas. The first area was on the right side of the building. Trash bags and loose trash were repeatedly left against the right side of the building. Exhibits 100 (K418801), 105 (K420826), 109 (K422297), and 206 (K501230). Sometimes there was a trash can left against the right side of the building that did not belong to the Property. A path ran along the side of the building to the back. There is another apartment building on that side of the Property. The owner of that building had erected a wooden gate which blocked access to the side path. The lock on the gate was broken and not replaced. The trash cans for the second apartment building were kept on the left side of that building (the right side of the Property). Exhibit 204.

The second problem area was a fenced area at the back of the building. The trash cans for the tenants' use were kept inside the fenced area and the gate was locked. When the Inspector visited the Property, there were repeatedly bags of trash on the ground inside the fenced area and garbage bags piled on top of the trash cans. Exhibits 109 (K422297), 207 (K501230) and 208 (K501231).

Sometime in July, 2011, the Department of Consumer & Regulatory Affairs ("DCRA") posted a warning NOV on the Property. Mr. Simpson spoke with the DCRA Inspector, Willis Taylor, on several occasions between July 2011 and October 26, 2011, about the trash left on the Property. At the suggestion of Inspector Taylor, Mr. Simpson moved the trash cans from the fenced area to a concrete pad and there have been fewer problems with people throwing trash around the cans. Mr. Simpson does not know who is leaving trash on the Property. Mr. Simpson notified the tenants at the Property that they should not use any trash cans on the side of the Property. Mr. Simpson has contacted DPW in November 2011 to report the problems he is having with trash dumped at the Property.

When the Inspector observed the trash cans at the Property, he did not see any identifying information for the solid waste collector. Respondent has a monthly contract with Moore's Trash Service for one pick up a week at the Property. Exhibit 210. Moore's Trash Service is a licensed solid waste collector.

DPW issued NOVs K418801 and K418802 to Respondent, return receipt requested. Respondent signed the receipts, dated them August 12, 2011, and returned them. Respondent told Mr. Simpson about the NOVs but he did not understand that they were NOVs from DPW rather than DCRA. Respondent did not file a plea for these two NOVs but noted their existence in another filing on November 30, 2011. DPW conspicuously posted the other six NOVs and Respondent filed pleas in a timely manner.

III. CONCLUSIONS OF LAW

A. Violations of 21 DCMR 700.3

DPW charged Respondent with violating 21 DCMR 700.3 that provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

The Government has met its burden of proof to show that Respondent violated 21 DCMR 700.3 repeatedly at the Property. The subsection imposes strict liability on those who own or control a property, regardless of the source of, or reason for, the offending waste. *See Gary Investment Corp. v. D.C. Dep't of Health*, 896 A.2d 193, 197 (D.C. 2006) (imposing strict liability on property owner for violation of 21 DCMR 700.3); *Bruno v. D.C. Bd. of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (also imposing strict liability). Here, DPW has shown

that Respondent owns the Property and there were repeated instances when solid waste was improperly stored. Mr. Simpson stated that he did not believe that the tenants at the Property were dumping bags of trash and loose trash. He did not know who was leaving the trash. However, those facts are not relevant to a determination of liability since Respondent owns the Property where the waste was found.

DPW seeks varying fines for the four violations of 21 DCMR 700.3. For the first violation, DPW requested abatement and a fine of \$150, although it could have requested \$1,000. 24 DCMR 1380.2. For the second violation, which occurred within 60 days of the first, DPW requested abatement and a fine of \$2,000. *Id.* For the third violation, which occurred within 60 days of the second but not within 60 days of the first, DPW requested abatement and a fine of \$2,000. *Id.* For the fourth violation, DPW requested only a fine of \$150, without abatement. *Id.* DPW requests fines totaling \$4,300.

The judges of this administrative court have the authority to “suspend or modify fines, penalties and abatement costs;” D.C. Official Code § 8-808(b)(5). This administrative court has determined that it furthers the goals of the Litter Control Administration Act to reduce fines based on mitigating factors such as corrective actions taken, efforts undertaken to prevent future violations, and good faith efforts to comply with the regulation. In this case, Respondent has taken corrective actions by cleaning up the Property on a number of occasions and moving the trash cans as suggested by a DCRA Inspector. Respondent has called DPW to complain about the dumping. Respondent has informed its tenants not to use any trash cans at the side of the Property. These are mitigating factors I have considered in reducing the fines as set out below.

B. Violations of 21 DCMR 705.1

DPW charged Respondent with violating 21 DCMR 705.1 that provides:

Each premises or part of a premises where solid wastes are generated and where those wastes are not collected by the District shall be served by a licensed collector.

DPW sought fines totaling \$5,000. Based upon Exhibit 210, which is the service agreement between Moore's Trash Service and Respondent, and Mr. Simpson's corroborating testimony, I find that Respondent had a licensed trash collector during the period in question. The Government offered no testimony to challenge that evidence. I find that the Government has failed to meet its burden to prove by a preponderance of the evidence that Respondent violated 21 DCMR 705.1. I impose no fines for the alleged violations of 21 DCMR 705.1.

C. Untimely Response to K418801 and K418802

Respondent is subject to a statutory penalty for failing to file two responses in a timely fashion. The NOV states that a respondent must sign the NOV and send it to the Office of Administrative Hearings, and that the answer must be "RECEIVED within 14 calendar days of the date of service noted above (19 calendar days if you received this by mail)." The law further provides that a Respondent who fails to respond to a notice of violation within 19 days (14 days plus 5 days mailing time) after "the date the notice was issued" is subject to a penalty equal to the amount of the fine at issue. D.C. Official Code § 8-804(f). The statute permits modification of the penalty for good cause shown. In this case, Respondent failed to file timely pleas for NOV Numbers K418801 and K418802 and has not established good cause for that failure. Respondent received the NOVs, as shown by the signed return receipts. While there may have been some confusion because of the contemporaneous DCRA actions, even a cursory

examination of the NOV would have shown the need to respond to it. Because I find no violation proven for NOV Number K418802, I impose no penalty. *Washington v. Dep't of Pub. Works*, 954 A. 2d 945 (D.C. 2008). A statutory penalty will be imposed for K418801, which is in addition to the authorized fine. D.C. Official Code § 8-808(b)(3).

D. Fines and Penalties

Based upon my findings of fact and conclusions of law, I impose the following fines and penalties:

K418801 Fine = \$75 and late filing penalty of \$75

K420826 Fine = \$1,000

K422297 Fine = \$1,000

K501230 Fine = \$75

Total \$2,225

IV. ORDER

It is, therefore, this 14th day of March, 2012:

ORDERED, that Respondent is **NOT LIABLE** for the violations charged in Notices of Violation No. K418802, K420827, K422298, and K501231; and it is further

ORDERED, that Notices of Violation No. K418802, K420827, K422298, and K501231 are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that Respondent is **LIABLE** for the violations as charged in Notices of Violation No. K418801, K420826, K422297, and K501230; and it is further

ORDERED, that Respondent shall pay fines and a penalty in the total amount of **\$2,225** in accordance with the attached instructions within 35 days of the mailing date of this Order (30 days plus 5 days service time pursuant to D.C. Official Code § 8-807(h)(1) and 1 DCMR 2812.5); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 35 days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ %, starting 35 days from the mailing date of this Order, pursuant to D.C. Official Code § 8-807(h)(1) and 24 DCMR § 1312.7; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 8-807(d-1), and the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 8-807(f); and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this Order are stated below.

Ann C. Yahner
Principal Administrative Law Judge

PAYMENT INSTRUCTIONS

Payment must be mailed or hand-delivered to the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to "D.C. TREASURER." Please write the "K" number in the memo line. Mail or hand-deliver to:

Clerk, Office of Administrative Hearings
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714

If you have questions, please call the Clerk, Office of Administrative Hearings: (202) 442-9094.

After an administrative law judge has issued a Final Order, a party may ask the judge to change the Final Order and ask the District of Columbia Court of Appeals to change the Final Order. There are important time limitations described below for doing so.

HOW TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO CHANGE THE FINAL ORDER

Under certain limited circumstances and within certain time limits, a party may file a written request asking the administrative law judge to change a final order. OAH Rule 2828 explains the circumstances under which such a request may be made. Rule 2828 and other OAH rules are available at www.oah.dc.gov and at OAH's office.

A request to change a final order does not affect the party's obligation to comply with the final order and to pay any fine or penalty. If a request to change a final order is received at OAH **within 10 calendar days** of the date the Final Order was filed (**15 calendar days** if OAH mailed the final order to you), the period for filing an appeal with the District of Columbia Court of Appeals does not begin to run until the Administrative Law Judge rules on the request. **A request for a change in a final order will not be considered if it is received at OAH more than 120 calendar days of the date the Final Order was filed (125 calendar days if OAH mailed the Final Order to you).**

HOW TO APPEAL THE FINAL ORDER TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may seek judicial review by filing a Petition for Review and six copies with the District of Columbia Court of Appeals at the following address:

Clerk
District of Columbia Court of Appeals
430 E Street, NW, Room 115
Washington, DC 20001

The Petition for Review (and required copies) may be mailed or delivered to the Court of Appeals, and must be received there within 30 calendar days of the mailing date of this Order, pursuant to D.C. App. R. 15(a)(2). There is a \$100 fee for filing a Petition for Review. Persons who are unable to pay the filing fee may file a motion and affidavit to proceed without the payment of the fee when they file the Petition for Review. Information on petitions for review can be found in Title III of the Court of Appeals' Rules, which are available from the Clerk of the Court of Appeals, or at www.dcappeals.gov.

Information on petitions for review can be found in Title III of the Court of Appeals' Rules, which are available from the Clerk of the Court of Appeals, or at www.dcappeals.gov.

Certificate of Service:

By U.S. Mail (Postage Paid):

Thomasine Jones
1710 Trinidad Ave. NE
Washington, DC 20002

Robert Simpson
Simpson Development LLC
8630 Fenton Street Ste 615
Silver Spring, MD 20910

By Inter-Agency Mail:

Christine V. Davis, General Counsel
Department of Public Works
2000 14th Street, NW 6th Floor
Washington, DC 20009

Reginald May
Department of Public Works
Deputy Division Chief for the
Solid Waste Education and Enforcement
Program
2800B New York Avenue, NE
Washington, DC 20002

I hereby certify that on _____,
2012 this document was caused to be served
upon the parties named on this page at the
addresses listed and by the means stated.

Clerk / Deputy Clerk